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IN THE

Supreme Court of the United States

October Term, 1966.

No. [redacted] 665

WILLIAM ROBERT KLEIN, *Petitioner,*

against

SOLOMON A. KLEIN, *Respondent.*

Petition for a Writ of Certiorari to the New York State Court of Appeals.

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IN THE

Supreme Court of the United States

October 1966 Term

No.

WILLIAM ROBERT KLEIN,

Petitioner,

vs.

SOLOMON A. KLEIN,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE NEW YORK COURT OF APPEALS.

Petitioner prays for a writ of certiorari to review the determination by the New York Court of Appeals, of an appeal from final judgment of the Appellate Division of Supreme Court, entered June 30, 1965, in affirmance.

Citations to Opinions Below.

The Report of the Court of Appeals' affirmance appears in 18 N. Y. 2d 598; that of the Appellate Division, Second Department, in 23 A. D. 2d 598.

Jurisdiction.

The final judgment of disbarment of petitioner, dated June 29, 1965, entered June 30, 1965, the order of affirmance made July 7, 1966. No order for rehearing, or extension of time for petitioning this Court was made.

Since July 7, 1966, petitioner has repeatedly demanded the record for certiorari, as certified to the Court of Appeals, on receipt thereof from the latter Court, and similar transmission of the original record of the Court of Appeals for its certification, but without success, as set forth in Appendix D.

The statutory provision, conferring jurisdiction is 28 Sec. 1257 U.S.C.A. (App. A, p. 21).

Questions Presented.

Whether a summary judgment of disbarment of an attorney-at-law, short shrift (a) devoid of notice (b) devoid of all hearings, and as the first known such disbarment in New York in 230 years, presents substantial Federal question, under constitutional provisions of due process and denial of equal protection of the state laws, *et al.*

Whether the secret, star-chamber inquisition tribunal, "Judicial Inquiry on Professional Conduct" of Kings County, heretofore twice the subject of this Court's review, on certiorari, does not again present substantial Federal questions, now that the gross abuses, then feared by the dissenting minority to be inherent, but not found, have now undisputedly in fact appeared, resulting in such summary disbarment, and invoked, by way of local reprisal.

Whether the Federal constitutional guarantees, and certiorari, itself, may, by the very form of the opinion of the State Court of Appeals, in its departures from the record on appeal, and from the facts thereof, be thwarted, by thus superimposing a "surface plausibility" of non-finality upon an actual final judgment, left undisturbed nonetheless (*Mills v. Alabama,* 16 L. Ed. [2]); and by submergence of the constitutional questions, specifically raised, by silence thereon.

Whether the denial by the Court of Appeals, of appellant's preliminary motion to compel the production by the prosecution, in essential aid of defense, of documents, one withheld and the other materially altered, the first being basic to valid existence of any charges, was not inconsistent with due process and a fair hearing.

U. S. and State Constitutional Provisions Involved and State Statutes.

First, Fourteenth, 6th and 8th Amendments, U. S. Const. (abridgement of freedom of expression, due process, right to be informed of charge, confrontation by accuser, and to counsel, cruel and unusual punishment) (App. A, p. 21).

Art. 1, Secs. 1, 5, 6, 8, 9, 11, covering same area (State Const.); also Art. 6, Sec. 7, jurisdiction of Court of Appeals; Art. 6, Sec. 20, barring judges from acting as referees (App. A, pp. 22, 3).

N.Y. State Statutes: Sec. 90 Judiciary Law, subd. 6 (disciplinary proceedings, requirements), Sec. 404 and Rule 3211 (preliminary motion practice), Sec. 3211 (requirements of judgments) of Civil Practice Law and Rules; Secs. 212, 213, 214 Jud. Law (administration of justice), No. 1, 15 and 29, Canons of Professional Ethics (requirements of attorneys in relation to administration of justice) (App. A, pp. 24-27).

Rule II, Court of Appeals (compelling production of papers for record on appeal) (App. A, p. 28).

Reasons for Granting Writ.

(a) This Court has repeatedly emphasized the constitutional safeguards to be invoked against jeopardy to attorney's license; the implied threat is to the Bar of the nation and its independence, by summary elimination when incurring a Court's displeasure for sheer compliance with professional obligations; the first Canon of Professional Ethics requiring that he shall be "encouraged" and "protected" thereon, but the local courts have abdicated (App. A, p. 27).

(b) A review of the Kings County "Judicial Inquiry on Professional Conduct" is again due, by this Court, in presence of undisputed abuses, recalling some worst ele-

ments of the ancient star-chamber tribunals, which were not found present on earlier reviews (*Cohen v. Hurley, Re Anon. 6 and 7 v. Baker, post*).

(c) Prior reviews of the "inquiry" never reached the specific State constitutional bar to Judges sitting as investigator-referees although the minority dissent inveighed against such practice, having never before been raised.

(d) The State Court's appellate affirmance sanctioned excesses of jurisdiction, suppression of documents essential to defense, thus departing from rules laid down by this Court; and is in conflict with other applicable decisions of this Court, now prevailing, and constitutes sharp departure from the accepted and usual course of judicial proceedings and for disciplinary matters. In *Willner v. Committee on Character and Fitness,* 373 U.S. 96, 102, 10 L. Ed. 2d 224, 9, this Court ruled:

> "• • • Moreover, the requirements of procedural due process must be met before a State can exclude a person from practicing law. 'A state cannot exclude a person from the practice of the law • • • in a manner or for reasons that contravene the due process or equal protection clause of the 14th Amendment.' (Citing a series of decisions.)"

Where and How Federal Questions Were Raised and Passed Upon Below.

(a) In original disciplining Court, by filed plea in bar and demurrer, raising constitutional objection; and by motion, made thereon, for dismissal of the proceedings, followed by abrupt entry of final judgment of disbarment; and in notice of appeal therefrom, filed therein, specifically raising Federal due-process denials, and violations of U. S. Constitution.

(b) In Court of Appeals: At pages 2, 3 of Appellant's Brief, all Federal questions herein raised, except those

created anew by Court of Appeals opinion; on earlier motion by prosecution to dismiss appeal for lack of substantial Federal and State constitutional questions, denied by the Court. Affirmance on appeal of final judgment was final determination, opinion annexed (Appendix A, p. 38).

Statement of Facts.

Petitioner, an attorney at law, was engaged in a complex litigation for clients, with large stakes, when compelled to invoke recently enacted statutes, inviting "criticisms, complaints and recommendations" concerning local administration of justice, the first known such application thereunder. Instead of original Court's compliance with the statutory requirements of investigation, and while specific charges remained unanswered by the charged Judge, petitioner found himself suddenly subject to counter-prosecution, effecting an immunity for the Judge, at hands of that same court.

The charges had been duly referred by the Judicial Conference of the State of New York (Appendix C), but first passed over by the Court and then re-referred to its own "inquiry" agency, which had no jurisdiction over such charges, but only over "*professional* conduct." Equally abrupt appearance of charges, and final judgment of disbarment followed. Thus, a complainant, then standing officially accredited already with contribution to administration of justice, found the very communications, addressed to governmental agencies having jurisdiction, concurrent, to wit, The Judicial Conference, the Governor and the local District Attorney, used against him to suppress the complaint and stifle his clients' expression, and as basis for prosecution, all at the "command" of the charged Judge.

The facts, here presented in most condensed form, appear as "Statement of Facts" at pages 4-25 of "appel-

lant's brief" in Court of Appeals, now on file with this Court. The prosecution did not offer any contest, challenge or dispute, either on argument, or in its Respondent's Brief, under its head, "The Facts," also on file here.

The disciplining Court, having dual authority under statutes, both for investigation of the local Judge, and attorneys, too, after long dormancy, issued its order to show cause, with annexed petition verified by the *pro se* prosecutor (chief counsel to the "inquiry"), enumerating seven "charges" against the attorney, requiring response in alternative forms. These charges, clearly "scraped up out of the distant past" and arising solely in the said litigation, were alleged to have been "reported" out of said "inquiry" by its presiding Supreme Court Judge, Hon. Edward G. Baker, who had throughout the "inquiry" repeatedly ruled that he would entertain no charges against this petitioner as the complainant under his orders, and that he could not go into any charges against a Judge, in his "Inquiry on *Professional* Conduct," under its establishing order (Appendix C, p. 42).

In *compliance* with the order to show cause, respondent filed plea in bar and demurrer, with application for enlargment of time to make such preliminary motions addressed to the complaint, which was granted. The motion was made within the time allotted, by notice, leave given by the Court to inspect the transcript of the secret proceedings held by the inquiry; and while that laborious inspection-and-copy process was going on, with every obstacle thrown into copying path, by the inquiry staff counsel, the prosecutor served his motion for summary judgment in "discipline." The motion to dismiss, upon 11 cited grounds, in bar, some of which also could operate as complete affirmative defenses, stood unopposed when there arrived in the mails, a certified copy of judgment with opinion, incorporated by reference (Appendix B). Petitioner had also, by cross-motion, applied for leave to im-

plement the 11 grounds by points of law and affidavits, as permitted by the Civil Practice laws, in renewal of his earlier motion to dismiss; and in any event was waiting, on grant of leave, to answer, upon denial of motion to dismiss, automatically allowed thereupon. The grounds given on his bare application for summary disposition, were two, each most shamelessly technical; failure of notice to contain a *calendar* date for its return, and failure to use literally, words of "denial."

On appeal the prosecutor, confronted with this clear chronology of disciplinary proceeding, submitted his own "chronological statement" in his brief, deftly omitting the timely-made motion to dismiss, and its renewal by way of cross-motion, and in conjunction therewith, equally deftly omitted from his citations of Sections "402, 403 and 409" CPLR, (to justify a misstatement of "legislative command" to answer by *denials* only, at one's peril), Section 404 and its inseparable Section 3211, providing for preliminary motions, *before* serving answer, and *automatic* leave, upon denial of such motions, to serve an answer.

The opinion of the Court of Appeals adopted this series of omissions as its pattern for decision, affirming judgment as thus "warranted" (Appendix B, p. 32).

Prosecution also unfairly added material to the record on appeal, after settlement, and in violation of two separate rulings by the Appeals Bench against such practice. The opinion, however, centered upon and used such record, nonetheless, in like manner, for affirmance.

As the record now stands, even before this Court undisputed, by affidavit of the prosecution filed in opposition to application for stay here, dated August 26, 1966, the essential "report" as made by the establishing order, *prerequisite* to any *valid* charges emanating from the "judicial" inquiry," "never existed." The special motion, though

unopposed, to compel production of that "report" if existent, had been denied by Court of Appeals, without opinion. (Appendix B.) That record is also on review here. The prosecutor had offered to take up the "report" matter with the Bench confidentially in secret, with exclusion of appellant (p. 2, appellant's reply brief, on file here).

At a meeting had, on notice, before the referee designated by the disciplining Court, a Supreme Court Justice, Hon. Walter R. Hart, to hear and report, upon the "issues" raised, by answer served *after* final judgment, now affirmed and left undisturbed, he agreed quickly, with this petitioner's contention, that there was no remaining judicial function that he could serve, that the final judgment was binding upon him, that he could not, by any report, affect that judgment, and that his report would not be binding upon the referring Court. The hearings were then adjourned without objection, to October 17, 1966.

Mr. Justice Harlan's denial of stay for lack of a "substantial" Federal question, runs counter to the decision of the Court of Appeals, denying that very claim by prosecution on motion in April, 1966, to dismiss appeal, taken as matter of right under constitutional provision (Art. 6, Sec. 7 (App. A, p. 23).

POINT I.

The short opinion of the Court of Appeals is constructed on (a) a departure from the judgment record on appeal, and (b) four fundamental inaccuracies of constitutional import accompanied by a transforming act—all producing a "surface plausibility" of non-finality, which should not be permitted to thwart certiorari.

The Court's opinion first takes recourse in a post-judgment record, of a motion to vacate the judgment, misstating the decision as having *granted* same, when in fact it was *absolutely denied,* having given leave to "answer," without disturbing in the least the judgment in its absolute finality, and the resulting extreme disbarment. This is apart from the violation of its rule to consider nothing outside the settled record on appeal.

In the second paragraph, a solemn "finding of guilt," on which the judgment with its recital of the opinion incorporated basically, is cavalierly transformed to a mere "intimation," to be "disregarded," again without disturbing the disbarment or the judgment's *finality.* In this respect, the opinion goes beyond the stark silence of the prosecution on that rootless finding.

Thus was effected only a subversion of clarity, in precisely those two areas of greatest constitutional vulnerability attaching to the judgment, by producing a "surface plausibility" of non-finality (*Mills v. Alabama,* 16 L. Ed. [2]—), aided by a silence, and resulting submergence of the substantial constitutional issues raised on appeal. The need for certiorari is rather thereby enhanced, to prevent a whittling away thereby of constitutional safeguards, which this Court recently so sensitively preserved in a $50-contempt determination, against attorneys who also dared challenge the qualifications of a sitting Judge (*Holt v. Virginia,* 381 U. S. 131).

The inaccuracies of the opinion are (1) misstating a "denial" of a motion to "vacate" as a grant thereof; (2) its reference to appellant's failure to deny the charges, as fatal, overlooking that preliminary motion in demurrer had been made, with Court leave below; (3) its bare reference to Sec. 90 J. L. as providing "opportunity to be heard," overlooking the inseparable co-governing Sections 3211 and 404 CPLR, admitted by the prosecution to be "prescribed" part of that "opportunity"; and its omission to recognize that denials are not necessary to an answer, e. g., in form of excuse, confession and avoidance (*Grant v. Pratt*, 87 App. Div. ....., 42 N. Y. 71, 8); (4) its effectual allusion to the absence of any "recital" of the non-existent "charge" to which, in fact, disbarment was principally attributed as lead "charge," overlooking that the opinion, finding guilt thereon, is basically recited in the judgment.

The entire opinion overlooks the requirement of Section 90 J. L. that "*Before*" any discipline, notice and opportunity *must* be afforded. The Court of Appeals' present support of prosecution's requirement of "denials," on peril of forfeiture of license, runs counter to its prior holding that even the State Legislature was powerless, constitutionally, to dictate such. (*Peck v. Cargill*, 167 N. Y. 391, cited in *Re Cullinan*, 82 App. Div. 445 at length.)

Its failure to vacate the judgment, on discovery of the lower Court's collective attribution, of extreme disbarment, to a never-made finding of guilt on a never-made charge amongst seven others, was in disregard of this Court's rule against such unfounded collective penal treatment, in *Gompers v. Bucks Stove*, 221 U. S. 408, 440; that unrooted "finding," on a non-existent charge, was but a judicial act of attainder, barred by Constitution (Art. 1, Sec. 9, U. S. Const.) (*Bouie v. Columbia*, 378 U. S. 353; *DeJonge v. Oregon*, 299 U. S. 353, 362, denial of due process).

The affirmance was a sanction of a judgment, disregarding wholesale abuses by the prosecution, at all stages, preliminary and right through. Thus, the Court disregarded this Court's long-standing requirements of a fair prosecution (*Brady v. Maryland*, 373 U. S. 83; *Maguire v. Illinois*, 360 U. S. 264; *Mooney v. Holahan*, 294 U. S. 103; *Griffin v. U. S.*, 183 F. 2d 990, 3; *People v. Robertson*, 12 N. Y. 2d 355; *People v. Zimmerman*, 10 N. Y. 2d 430; and *People v. Savvides*, 1 N. Y. 2d 554).

POINT II.

The final judgment, on its face, is devoid of essential recitals for due process, corresponding to the actual absence of notice on the leading "charge," and to the actual absence of any hearings or of provision therefor, on any of the charges, noticed and unnoticed.

A proper final judgment must recite either a default suffered or a decision duly arrived at, as basis therefor. (Sec. 5011, CPLR.) The power to suspend or disbar an attorney concededly resides in Sec. 90 J. L., which recites the minimum prerequisites "BEFORE" such exercise, in safeguard of his license. Notice of charge, and opportunity to be heard in defense, are "musts," with further concession by the prosecution, that that opportunity is further defined, as "prescribed" by the "governing" Article 4 CPLR, including Sec. 404, therein. That section, and Sec. 3211 CPLR, which are read together, necessarily, permit alternatively, preliminary motions, by way of "Objections in Point of Law."

But the judgment recites, whether read separately or together with its incorporated opinion, no hearings had on any charge, no provision for hearings of any kind. While it does recite leave to make preliminary motions granted

by the Court, it is silent as to the actual timely such motion made, by notice dated February 13, 1965. This omission finds repetition in respondent's brief and in Court's opinions of both Courts. Nor will there be found anywhere, in judgment, or opinions, or in that brief, any allusion to the automatic right to serve an answer, upon denial of the motion to dismiss.

The right to make motions has recently been held by this Court, to be part of due process (*Holt v. Virginia,* 381 U. S. 131).

Such "short-shrift," summary disbarment, perhaps the first since 1730 in New York (a retaliatory measure) was treated by Mr. Justice Black in his dissent opinion, when treating with this Kings County "Judicial Inquiry's" predecessor (*Cohen v. Hurley,* 366 U. S. 117, 139, 6 L. Ed. 2d 156, 171. In that case, and *Re Anon. 6 and 7 v. Baker,* 360 U. S. 287, 3 L. Ed. 1234) this Court entertained certiorari, giving its majority approval to the "inquiry," solely upon the basis of its then apparent protection of attorney's rights and innocent reputations, afforded by its secrecy provision. Mr. Justice Black however foresaw inherent dangers and abuses, as threats to an independent bar, which he deemed vital to the free community.

Such devoid judgment can command no judicial respect from any Court. *Mooney v. Holahan,* 294 U. S. 103; *Ferguson v. Crawford,* 70 N. Y. 253; *Polak v. Anonymous,* 7 A. D. 2d 914. Mr. Justice Frankfurter in, 330 U. S. at page 309, wrote pertinently:

> "Only when a court is so obviously travelling outside its orbit, as to be merely usurping judicial forms and facilities, may an order issued by a court be disobeyed and treated as though it were a letter to a newspaper."

The prosecutor's application for summary judgment of discipline, because the notice of motion to dismiss did not

contain an unrequired *calendar* return date, identifying such by description instead, and for failure in a demurrer response, to allege literal "denial," must be viewed as pretense, having never rejected the notice, as law provides (Rule 2214 CPLR) (Rule 2101 CPLR). This Court recently condemned such "booby-trap" type of practice, as providing the basis for determination of a case (*Surowitz v. Hilton Hotels,* decided January 13, 1966).

Even if, *arguendo*, a default (nowhere claimed in the record) had been suffered on the order to show cause (actually fully complied with) deliberate or inadvertent, by failure to serve any response to its alternative form of demand therefor (App. A, top of p. 30), hearings in any event are prerequisite on the allegations of the complaint, for at least a *prima facie* proof of the charges, before any determination of guilt. (*Re Broome,* 10 N. Y. 2d .....; *Re D'Adamo,* 11 A. D. 2d 378; 207 N. Y. S. 2d 89.)

In *Sharkey v. Thurston,* 268 N. Y. 123, 6, the State Court of Appeals, held:

> "It is fundamental rule of our common law, embodied in the Constitution of our State and Nation, that no person may be adjudged guilty and punished upon a charge of wrongful conduct, without a hearing. Decision must await the hearing of the defense. The cause may not be prejudged, and no man may be both accuser and judge. Otherwise, a hearing becomes a fiction, and no fiction can destroy constitutional guarantees."

This prosecutor, as author of preface to Vol. 9, Bender's Forms, for Consolidated Laws, on other occasion, wrote well:

> "* * * For our Courts have always asserted and exercised authority, which though perhaps not expressly established by statute, is based upon the inherent right and duty of the court to protect the citizen in his constitutional prerogative and to pre-

vent oppression or persecution" (citing *People v. Gershwin*, 294 N. Y. 163, 7; *Re Morhaus*, 293 N. Y. 131, 6; *Re Lyons*, 290 N. Y. 19).

POINT III.

The entire judicial inquiry proceedings as authorized, leading up to the disciplinary proceedings, allegedly authorized thereby, were so conducted, as to be void *ab initio*, and to merit expungement; and accordingly the charges *ipso facto*, are dismissable.

Actually, the opinion of the Court of Appeals, by its first paragraph, reached only a secondary issue. The prior proceedings, authorized by the Establishing Order of the same disciplining Court, dated December 19, 1962, and the two special authorizing orders (Appendix C), made pursuant thereto, which are the genesis of the charges, and all their denials of due process, and of the equal protection of the laws, spawned in their secrecy, received no treatment, therein, though squarely thus raised.

Although the presiding officer of the "Judicial Inquiry on Professional Conduct", Judge Baker of the local Supreme Court, had himself defined the proceedings as "non-adversary" and mere *general* investigation, into conditions of the profession (*Re, Judicial Inquiry, Anon.*, 19 Misc. 2d 491, 189 N. Y. S. 2d 279), that rule, and the very terms of the establishing order, binding alike on the issuing Court and those dealing with it (*Re Moore*, 108 N. Y. 280), were grossly and designedly violated from the start, with malice aforethought, to "get" one man, although he was the complainant authenticated, as such, by the orders. This was illegal reverse action, voidly being outside the specified jurisdiction, and so ruled to be, by Judge Baker, presiding, but nonetheless pursued. (*Re Lange*, 283 App. Div. 223,

Fisch, 14 N. Y. 2d 305; *Re Ward v. Western Union,* 205 App. Div. 723, 200 N. Y. S. 865, wherein the State's Governor was condemned for such single use of an ostensible general investigation); *Re Barnes,* 204 N. Y. 108, 131, where a member of the Court of Appeals declared:

> "The abuse of the power of official investigation, for purposes other than those contemplated by law, is a detestable practice calling for the sternest reprobation."

In *Anon. 6 and 7 v. Baker,* 360 U. S. 287, 299, 3 L. Ed. 2d 1234, Mr. Justice Black, in dissent, wrote:

> "In fact it was the star-chamber judges who helped to make closed-door court proceedings so obnoxious, in this country, that the Bill of Rights guarantees public trials, and the assistance of counsel. And secretly compelled testimony does not lose its highly dangerous potentialities merely because it represents only a preliminary inquisition * * * whereby the court is given information that may move it to other acts thereafter. Nor does this record justify a holding that this inquisition adopted the mantle of secrecy and barred counsel from the room, out of a tender solicitude for the reputation of the defendants in this contempt case."

The abuses in diversion of the "inquiry" to a counter-prosecution of the complainant-attorney included the misapplication of the complaint file, the confidential communications, addressed to the governmental authorities vested with such jurisdiction the Judicial Conference and its agency therefor, the local Appellate Division (Sec. 214 J. L.) for investigating misconduct of local judges, the Governor of the State and the local County District Attorney, to be used in prosecution of their author in stifle-ment of the charges against the Judge and of citizen's right to petition departments of government without fear of reprisal, under the State Constitution (Art. 1, Sec. 9) and to freely speak their protests (First Amendment U. S.

Const. and Art. 1, Sec. 8, St. Const.) This diversion of complainant file, always held sacred and secret, was in direct violation of the broad, salutary public policy of the state, as pronounced on other occasions by the disciplining Court: *Lewis v. Roux*, 222 App. Div. 204, 226 N. Y. S. 70 (See *Bryan v. Collins*, 111 N. Y. 143) (App. C, pp. 46-50).

These acts of clients and their attorneys, were pursuant to statutory invitation to make "criticisms, complaints and recommendations" (Sec. 212, 213, Jud. Law). An attorney stands obligated to make complaint under the first of the Canons of Professional Ethics, having the binding force of law for his profession (see also Canons 15 and 29). Not only does the attorney become thereby entitled to the support and "encouragement" of the Courts and the bar, but also their "protection;" and in fact the disciplining Court, at virtually the same time of this petitioner's disbarment, was giving its approval to properly channelled complaints against Judges in *Re Greenfield-Rothstein*, 24 A. D. 2d 65, 262 N. Y. S. 2d 340, citing with approval the pertinent cases, *Re Manheim*, 113 App. Div. 36, *Re Rockmore*, 127 App. Div. 499, See *Hurdman v. Kelly*, 251 App. Div. 862 (App. C, p. 41).

Suppression of public records, needed for "inquiry" and defense, permeated the entire inquiry, culminating in such actual order, dated March 11, 1964, from the disciplining Court, and in complete disregard of its own investigating orders. Thus that Court violated still another of its own authoritative rulings: In *Werfel v. Fitzgerald*, 260 N. Y. S. 2d 791, 8, it held sternly:

> "Where the defense of a person accused of a crime requires access to public records or even to records sealed from general examination, the right of inspection has a greater sanction, and must be enforced. (*Ex Parte* Uppercu, 239 U. S. 435, 440 * * *"

The *now undisputed* absence of any "report," required by the establishing order, from the Judge presiding, as prerequisite to any resulting "charges" against an attorney, emphasizes the weird stages of its evolution, at hands of the prosecutor, from sworn allegation of its existence, to refusal to show it, despite his Court's direction to do so, to refusal to state whether "one" or "two" reports existed, to finally offering secret and confidential treatment of the "report" matter with the Judges of the Court of Appeals, to the exclusion of appellant, with final silence here on its non-existence (App. C, pp. 42-6, 48, 50).

This brought on appellant's motion to compel production for record on appeal, under Court Rule II, invoking this Court's rule in bar of the entire proceedings in such prosecution: *U. S. v. Reynolds,* 345 U. S 1, 97 L. Ed. 727; *Jencks,* 353 U. S. 657, 1 L. Ed. 2d 1103; *U. S. v. Andolshek,* 142 F. 2d 503 (CA-2). But the Court of Appeals denied without opinion, in disregard of these cited cases (App. B, p. 40).

Never before apparently, was the question raised before this Court, as to the state constitution's own bar to having a State Supreme Court Justice preside over a body of inquiry, to "receive, investigate and report" evidence as a referee (Art. 6, Sec. 20, also Sec. 4312 CPLR). If thus disqualified, the entire proceedings were void *ab initio,* and any charges emanating therefrom likewise. On this the prosecution has also maintained a consistent silence. This effectual down-grading of the Judge's function received the passing attention of Mr. Justice Black in *Cohen v. Hurley, ante,* as intolerable, also in *Re Anon. 6 and 7 v. Baker, ante.* The N. Y. Court of Appeals also had dealt with such constitutional impropriety, in condemnation thereof (*Re Richardson, Connolly v. Scudder,* 247 N. Y. 401).

POINT IV.

The effectual refusal of the Disciplining Court to pass upon allegations of its bias has been held by this Court to be denial of due process.

Amongst the grounds of the plea in bar and demurrer was alleged bias of the Court Bench, which included the very Judge under charges, among its members. He actually sat on the first motion, in the disciplinary proceeding (See Sec. 5711 CPLR cont'g former C. P. A. Sec. 618). The order, showing that participation was altered to effect concealment of that participation, while the appeal, earlier was before the Court of Appeals, with appellant's demand for its later restoration to the record on appeal. Silence of the prosecution, and absence of opposition thereto, did not prevent denial of the motion.

Transfer of the case was requested back to the jurisdiction of the First Judicial Department, and to its Bar Association, where already, *for 10 months prior to the referral of the subject matter* for investigation, an actual proceeding, with issue joined thereon, had been pending. Rule 3211 (4) CPLR was thus disregarded and violated (*Erie v. Western,* 304 N. Y. 342).

The lower Court's refusal to permit implementation of the motion to dismiss was tantamount to refusal to pass upon its bias. This Court in *Holt v. Virginia,* 381 U. S. 131, held such refusal to be denial of due process.

The Court of Appeals would send appellant back to the disciplining Court for "hearings," to be held by a constitutionally barred referee, bound by a final judgment, standing unanimously affirmed, with the attorney thus discredited at outset, with no authority or power to make any report binding upon the referring Court (See *Re Broome,* 10 N. Y. 2d, and the opinion below of the same disciplining Court, so holding).

Such a futile and circuitous returning course, thus held out to this petitioner was pictured in *Mills v. Alabama,* by this Court, 16 L. Ed. 2d with refusal to tolerate it, as being "no more than a few formal gestures."

This Court has held due process of law to be denied by an existing bias (*Tumey v. Ohio,* 273 U. S. 510, 71 L. Ed. 749; *Estes v. Texas,* 14 L. Ed. 2d 543, 550, holding that "Justice must satisfy the appearance of justice (*Offutt v. U. S.,* 348 U. S. 11, 14 * * *)."

CONCLUSION SUGGESTED.

1. The judgment on review, the immediate proceedings leading to its issuance, and the previous Judicial Inquiry on Professional Conduct's proceedings, as alleged authority and basis thereof, stand permeated with fundamental unconstitutionality.

2. The judgment should be vacated, the judicial inquiry proceedings expunged, and the disciplinary proceedings and its enumerated charges dismissed.

3. Inquiry of any charges which may lie, in any event, may freely be pursued at the Bar Association of the City of New York, with resumption of prior proceeding on complaint and answer already filed there, if so advised.

4. This Court should declare, in the interest of the Bar as a whole, the affirmative force of Canon of Ethics No. 1, in protection and encouragement of complying attorneys, and in presence of this unprecedented summary disbarment.

Wherefore this petitioner-applicant prays that this Court will so grant writ of certiorari herein.

Dated, New York, September 7, 1966

WILLIAM ROBERT KLEIN,
Petitioner *pro se*,
132 West 43rd Street,
Borough of Manhattan,
City of New York.

Verification.

County and State of New York, ss:

WILLIAM ROBERT KLEIN, being duly sworn, deposes and says:

I am the within petitioner-applicant. I have read the contents of the within Petition, and the same is in all respects, true and correct, to the best of my knowledge and belief, except as to any matters therein alleged to be true upon information and belief, and as to those matters, I believe it to be true.

/s/ WILLIAM ROBERT KLEIN

Sworn to before me this
day of September, 1966.
VICTOR BLEIWAS
Notary Public, State of New York
No. 24-5343525 Qual. in Kings Co.
Commission Expires March 30, 1968.

APPENDIX A.

U. S. Constitution:

1st Amendment:

"Congress shall make no law * * *abridging the freedom of speech, or of the press; or the right of the people * * * to petition the government for a redress of grievances."

6th Amendment:

"in all criminal prosecutions, the accused shall enjoy the right * * * to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him, * * * and to have the assistance of counsel for his defense."

14th Amendment:

"* * * No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life liberty or property, without due process of law; nor deny to any person within its jurisdiction, the equal protection of the laws."

8th Amendment:

" * * * nor cruel and unusual punishments inflicted."

United States Statute: 28 USCA 1257. "State courts, appeal, certiorari.

Final judgments or decrees rendered by the highest Court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:

* * *

(3) By writ of certiorari.

"• • • where any right, title, privilege or immunity is specially set up or claimed under the constitution, treaties, or statutes of, or commission held, or authority exercised under the United States • • •"

N. Y. State Constitution: Art. 1, Sec. 1:

"No member of this State shall be disfranchised, or deprived of any rights or privileges secured to any citizen thereof, unless by the law of the land • • •"

Art. 1, Sec. 5:

"• • • nor shall cruel and unusual punishments be inflicted, • • •"

Art. 1, Sec. 6:

"• • • and in any trial in any Court, whatever, the party accused shall be allowed to appear and defend in person, and with counsel, as in civil actions, and shall be informed of the nature and cause of the accusation, and be confronted with the witnesses against him.

"No person shall be deprived of life, liberty or property without due process of law."

Art. 1, Sec. 8:

"Every citizen shall freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or press • • •"

Art. 1, Sec. 9:

"No law shall be passed, abridging the right of the people • • • to petition the government, or any department thereof."

Art. 1, Sec. 11:

"No person shall be denied the equal protection of the laws of this State of any subdivision thereof."

Art. 6, Sec. 7: Jurisdiction of the Court of Appeals:

"Appeal to the Court of Appeals may be taken in the classes of cases hereinafter enumerated in this section;

"In civil cases and proceedings as follows:

(1) As of right, from a judgment or order entered upon the decision of an appellate division of the supreme court which finally determines an action or special proceeding wherein is directly involved the construction of the constitution of the state of the United States * * *"

Art. 6, Sec. 19:

"No judge or justice shall sit in any appellate court in review of a decision, made by him or by any court of which he was at the time a sitting member * * *."

Art. 6, Sec. 20:

"(b) A judge of the court of appeals, justice of the supreme court, judge of the court of claims, judge of a county court, judge of the surrogate's court * * * may not:

(1) hold any other public office or trust, except member of a constitutional convention, or a member of the armed forces * * *"

* * *

(4) engage in the practice of the law, act as an arbitrator, referee or compensated mediator in any action or proceeding or matter, or in engage in the

conduct of any other profession or business which interferes with the performance of his judicial duties."

N. Y. State Statutes:

Sec. 90, Judiciary Law:

"Subd. 6. Before an attorney or counselor-at-law is suspended or removed, as prescribed in this section, a copy of the charges against him must be delivered to him personally within or without the state * * * and he must be allowed an opportunity of being heard in his defense."

Rule 3211, Civil Practice Law and Rules:

"(a) Motion to dismiss cause of action. A party may move for judgment dismissing one or more causes of action asserted against him, on the ground that:

* * *

(2) The Court has not jurisdiction of the subject matter of the cause of action;

* * *

(4) there is another action pending between the same parties for the same cause * * *;

* * *

(5) the pleading fails to state a cause of action;

* * *

(8) the court has not jurisdiction of the person of the defendant;

* * *

(f) Service of a notice of motion under subdivision (a) or (b) before service of a pleading respon-

sive to the cause of action or defense sought to be dismissed, extends the time to serve pleading until 10 days after service of notice of entry of the order."

Art. 4, Sec. 404: "Objections in point of law:

(a) By respondent. The respondent may raise an objection in point of law by setting it forth in his answer or by a motion to dismiss the petition, made upon notice within the time allowed for answer. If the motion is denied, the court may permit the respondent to answer, upon such terms as may be just; and unless the order specifies otherwise, such answer shall be served and filed within five days after service with notice of entry. The petitioner may re-notice the matter for hearing upon two days' notice."

* * *

Rule 2101 CPLR. "Defects in form; waiver.

A defect in the form of a paper, if a substantial right of a party is not prejudiced, shall be disregarded by the Court, and leave to correct shall be freely given. The party on whom a paper is served, shall be deemed to have waived objection, to any defect in form unless, within two days after the receipt thereof, he return the paper to the party serving it with a statement of particular objections."

Rule 2214 CPLR. "Motion papers; service; time.

(a) Notice of motion. A notice of motion shall specify the time and place of the hearing on the motion, the supporting papers upon which the motion is based, the relief demanded and the grounds therefor. Relief in the alternative, or several different types, may be demanded."

Sec. 5601 CPLR. "Appeals to the court of appeals as matter of right.

* * *

(b) Constitutional grounds: An appeal may be taken to the Court of Appeals, as of right.

1. From an order of the appellate division which finally determines an action, where there is directly involved the construction of the constitution of the state or the United States."

Sec. 5011 CPLR.

"Definition and content of judgment. A judgment is the determination of the rights of the parties in an action or special proceeding and may be either interlocutory or final. A judgment shall refer to and state the result of the verdict or decision, or recite the default upon which it is based."

Sec. 5711 CPLR (formerly Sec. 618, Civil Practice Act). "Where appeal heard.

An appeal to the Appellate Division shall be brought in the department embracing the county in which the judgment or order appealed from is entered and there heard and determined, unless in furtherance of justice the appeal is sent to another department."

Sec. 618, CPA: "Removal of Appeal to another Department.

In any case where an appeal to the appellate division of any department, comes on for argument and the justice before whom the action was tried or who granted the order appealed from, is a member of such appellate division, the appellant may make an application to such appellate division for, and the court may grant an order directing that such ap-

peal be sent to an adjoining department to be specified in the order, to be there heard and determined. The appellate division in any other appeal may make an order in furtherance of justice, directing that such appeal be sent to the appellate division of any department to be there heard and determined."

Sec. 214, Jud. Law:

"Administrative powers and duties of the appellate divisions.

In accordance with the standards and administrative policies established by the administrative board, the appellate divisions shall supervise the administration and operation of the courts in their respective departments; * * *"

N. Y. State Canons of Professional Ethics:

"1. The Duty of the Lawyer to the Courts.

It is the duty of the lawyer to maintain toward the Courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Bar against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit the grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected."

* * *

"15. How Far a Lawyer May Go in Supporting a Client's Cause.

* * *

"The lawyer owes 'entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights, and the exertion of his utmost learning and ability' to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor should restrain him from the full discharge of his duty. In the judicial forum, the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert such remedy or defense * * *".

"29. Lawyers should expose without fear or favor before the proper tribunals, corrupt or dishonest conduct in the profession * * *. He should strive at all times to uphold the honor and to maintain the dignity of the profession and to improve not only the law but the administration of justice."

Rule II of the Court of Appeals:

"Further return may be ordered. If the return made by the Clerk of the court shall be defective, either party may, on an affidavit specifying the defect, and on notice to the opposite party, apply to one of the judges of this Court for an order, that the clerk make a further return without delay."

APPENDIX B.

Order of Disbarment.

At a Term of the Appellate Division of the Supreme Court of the State of New York held in and for the Second Judicial Department at the Borough of Brooklyn, on the 29th day of June, 1965

Present—Hon. George J. Beldock,
Presiding Justice.
" Henry L. Ughetta,
" Arthur D. Brennan,
" L. Barron Hill,
" Samuel Rabin,
Justices.

IN THE MATTER

of

WILLIAM ROBERT KLEIN, an attorney.
SOLOMON A. KLEIN,

Petitioner,

WILLIAM ROBERT KLEIN,

Respondent.

A proceeding having been instituted in this court upon the petition of Solomon A. Klein, verified the 16th day of December, 1964, in respect to William Robert Klein, an attorney and counselor at law, admitted to the Bar on January 8, 1928, at a Term of the Appellate Division of the Supreme Court in the First Judicial Department and, after

revocation of his license having been re-admitted to the Bar as William R. Klein on January 5, 1955, at a term of the same court, petitioning for an order directing that the respondent, William Robert Klein as an attorney and counselor at law be disciplined upon the charges set forth in said petition, and why such other or further action upon the charges embodied in the petition, as justice may require, should not be had, and for such other and further relief in the premises as may be just and proper; and the respondent having filed an answer, and this court by order dated January 13, 1965 having granted respondent's motion to enlarge time to make motions in said proceeding, and having enlarged his time to the 16th day of February, 1965; and the petitioner having moved by notice of motion, dated May 20, 1965 to discipline said respondent, for the acts of professional misconduct set forth in the above mentioned petition, and the respondent having cross moved by notice of cross motion, dated June 1, 1965 to dismiss the petition and for other relief.

Now on reading and filing the petition verified the 16th day of December, 1964, affidavits of Solomon A. Klein in support of motion to discipline respondent and the answer of respondent and affidavit of William R. Klein in support of cross motion and in opposition to motion to discipline respondent, and all the papers filed herein, and the said motions having been submitted by Mr. Solomon A. Klein, petitioner appearing in person and submitted by Mr. William R. Klein, respondent appearing in person, and upon the *per curiam* opinion of this court, dated June 29, 1965 heretofore filed and made a part hereof, and due deliberation having been had thereon:

It is Ordered that the petitioner's motion to discipline respondent be and the same hereby is granted; the respondent be and the same hereby is disbarred, effective as of the date of the entry of this order, that is June 29, 1965; and it is further

Ordered that respondent's cross motion to dismiss the petition and for other relief be and the same hereby is denied, and it is further

Ordered that the name of said William Robert Klein (admitted as William R. Klein) be struck from the roll of attorneys and counselors at law in the State of New York, and it is further

Ordered, pursuant to the appropriate provisions of the Judiciary Law of the State of New York, that the said William Robert Klein (admitted as William R. Klein) is hereby commanded to desist and refrain from the practice of law in any form, either as principal or as agent, clerk or employee of another, and is forbidden to appear as attorney and counselor at law before any court, judge, justice, board, commission or other public authority or to give to another an opinion as to the law or its application or any advice in relation thereto.

Enter:

JOHN J. CALLAHAN
Clerk

(With Clerk's certification and seal.)

APPELLATE DIVISION—SECOND DEPARTMENT.

IN THE MATTER

of

WILLIAM ROBERT KLEIN, an Attorney.
SOLOMON A. KLEIN,

Petitioner;

WILLIAM R. KLEIN,

Respondent.

Disciplinary proceeding against respondent, William R. Klein, an attorney, instituted by Solomon A. Klein as petitioner. Respondent was admitted to the Bar on January 8, 1928, at a term of the Appellate Division of the Su- Court in the First Judicial Department, and after revocation of his license (242 App. Div. 494, lv. to app. den. 270 N. Y. 675; see also 265 App. Div. 934) he was readmitted to the Bar on January 5, 1955, at a term of the same court.

Solomon A. Klein, petitioner *pro se.*
William Robert Klein, respondent *pro se.*

Per Curiam—After certification by the State Board of Law Examiners on September 22, 1922, respondent's application for admission to the Bar was rejected by the Committee on Character and Fitness for the First Judicial District on October 18, 1923, and again on May 28, 1925. A petition for rehearing was denied in May, 1926, but a third petition for rehearing was granted in November, 1927. On December 17, 1927, respondent was approved by the character committee and on January 8,

1928, was admitted to the Bar by the Appellate Division, First Department.

Thereafter, in a proceeding instituted by the Association of the Bar of the City of New York, hearings were held before an official referee, who, on February 5, 1934, reported that respondent had made fraudulent representations and concealments before the Committee on Character and Fitness duly appointed by the court in connection with his original application for admission to the Bar. The findings of the official referee were sustained, and on December 7, 1934, respondent's license to practice law was revoked (242 App. Div. 494, lv. to app. den. 270 N.Y. 675) Applications for vacatur of the order of revocation were denied on May 28, 1937, and on December 30, 1942 (265 App. Div. 934).

On May 13, 1953 the respondent made application to the Appellate Division, First Department, for leave to appear before its Committee on Character and Fitness as an applicant for admission to the Bar. The court denied this motion without prejudice to a reapplication in the event respondent again took and passed the Bar examinations. After again passing the Bar examinations, respondent was admitted to the Bar on January 5, 1955, by the said Appellate Division.

By orders made in October, 1963, this court directed the Judicial Inquiry on Professional Conduct in Kings County to inquire into and report with respect to written charges made by respondent and his clients (Ursini) of alleged corruption on the part of various justices of the Supreme Court in the Second Judicial Department and by two attorneys in connection with an action in the Supreme Court Queens County, entitled Fun Fair Park, Inc. v. Ursini. The charges were found to be baseless. The justice presiding at the Additional Special Term of the Supreme Court, Kings County, before whom such inquiry was conducted, found that respondent was guilty of making baseless

charges against the judges and attorneys and of other misconduct.

On December 17, 1964, this disciplinary proceeding was instituted against respondent. The petition alleged that respondent was guilty of the following misconduct:

(a) He contumaciously refused to answer questions as a witness on January 23 and 24, 1964, at the Additional Special Term of the Supreme Court, Kings County, in violation of his duty as a member of the legal profession, and defied the authority of the court to inquire into information within respondent's knowledge relating to the charges of respondent and his clients with respect to the alleged misconduct and corruption on the part of members of the judiciary and members of the Bar, and relating to his conduct as a lawyer, and thereby hindered and impeded the judicial inquiry directed by this court:

(b) He contumaciously obstructed and impeded the Additional Special Term by willful failure to appear on November 21, 1963, as a witness under subpoena, and by instructing his client (Ursini) to refuse to testify when the client appeared before the Additional Special Term as a witness pursuant to subpoena:

(c) In an action in the Supreme Court, Queens County, he deceived the court and the third-party defendant by preparing and serving a third-party summons and complaint in the name of an attorney of record for the third-party plaintiff, when in fact the said attorney had not been retained by the third-party plaintiff, to prosecute the action and respondent's use of such attorney's name was without the attorney's knowledge or consent;

(d) In October, 1960, respondent solicited legal business from the client of other attorneys in a pending lawsuit and attempted to induce such client to discharge such other attorneys and to retain respondent instead;

(e) In October, 1961, respondent solicited legal business for another attorney;

(f) In October, 1961, without the knowledge or consent of the attorneys for an adverse party in a pending litigation, respondent communicated with such adverse party; and

(g) Despite the fact that respondent had already been retained as attorney for Fun Fair Park, Inc., thereafter in March, 1964, he aided in the preparation and filing of a petition by creditors in an involuntary bankruptcy proceeding against said Fun Fair Park, Inc. in the United States District Court for the Eastern District of New York; he gave the creditors legal advice, and prepared papers for execution and filing by such creditors. Thereafter respondent appeared in said bankruptcy proceeding as attorney for the alleged bankrupt and filed an answer to the creditor's petition, denying allegations thereof, which were based upon information furnished by him.

On January 6, 1965, respondent filed an answer in which he alleged "in Bar and Demurrer" that (1) the court lacks jurisdiction over the subject matter and the person of respondent; (2) the proceeding is in deprivation of his constitutional rights; (3) this court is without authority to initiate or prosecute charges against him; (4) this court should withdraw and transfer the proceedings to another "equal jurisdiction"; (5) there is now pending and undetermined another proceeding at the Bar Association of the City of New York "of which the present proceeding is in substantial if not complete duplication," which is a bar to the present proceeding; (6) the orders of this court authorizing this proceeding were based on the unlawful and improper appropriation of confidential and privileged communications from him "addressed to and belonging to State Agencies and the Office of the Governor of the State of New York" and were in "violation of the public policy of the State," by reason of which the proceeding is barred;

(7) this court "did * * * terminate" the proceeding before the service of the order to show cause "and upon prior recorded assurances given duly to respondent and others, that no charges were or would be considered or entertained against this respondent, and did thereby intend, on information and belief, to and did exonerate and relieve this respondent of any disciplinary liability," by reason of which this proceeding is barred; (8) there is now pending and undetermined a proceeding before the Judicial Conference and its Administrative Board, by reason of which this proceeding is barred; (9) respondent was exonerated of all charges and, "by reason of orders made by this court in denial of access to and suppression of the records," this proceeding is barred; (10) this proceeding was maliciously instituted by respondent's adversaries, to defeat the interests of respondent's clients in the pending Fun Fair Park litigation, by reason of which respondent "requests and demands, * * * as is usual in disciplinary proceedings", an adjournment of this proceeding until the determination of the litigation mentioned; and (11) the petition is insufficient to constitute a statement or notice of charges, or to enable him to answer.

After the service of the "answer" and between February 8, 1965, and April 29, 1965, pursuant to authorization of this court to examine the records of the judicial inquiry, the respondent on thirty-two separate days appeared at its office and there examined the minutes, exhibits and records in its possession pertaining to the charges against him.

The aforesaid "objections" in respondent's "answer" are addressed solely to the jurisdiction of this court over respondent's conduct as an attorney. However, the answer does not contain a single denial by him of any of the factual allegations of the petition.

Respondent's claim that this court lacks jurisdiction to discipline him by reason of his admission, residence and

maintenance of an office in the First Judicial Department, is without merit. The petition for discipline sets forth numerous acts of misconduct on the part of respondent committed in this department; his contumacious conduct before, and his obstruction of, the judicial inquiry in this department, and other acts of misconduct in litigation in this department and in the courts thereof.

None of the "objections" alleged in respondent's answer has merit. None of the charges in the petition for discipline has been denied in fact by respondent.

When an attorney makes baseless written charges against members of the judiciary and members of the Bar; is guilty of contumacious conduct in refusing to testify after subpoena with respect to these charges; advises his client, duly subpoenaed, to refuse to testify when called before a court of inquiry under direction of this court; when he hinders, impedes and obstructs a judicial inquiry directed by this court; when he fraudulently uses the name of another attorney in litigation without the knowledge or authorization of said attorney; when he unlawfully solicits legal business and seeks to interfere with and impair the relationship of client and attorney, when he communicates with an adverse party in litigation knowing that such adverse party had appeared and was represented by other counsel, without the knowledge or consent of the other counsel, and when he undertakes to serve as attorney for both sides in a bankruptcy proceeding pending in court and then takes contrary and inconsistent positions on both sides, he demonstrates such lack of character and fitness as to require his disbarment.

Motion of petitioner to discipline respondent granted, and the respondent is disbarred, effective as of the date of the entry of the order hereon.

Respondent's cross-motion to dismiss the petition and for other relief denied.

All concur.

Opinion.

STATE OF NEW YORK,

COURT OF APPEALS.

2. No. 276. 66

IN THE MATTER

of

WILLIAM ROBERT KLEIN, an Attorney.
SOLOMON A. KLEIN,

Respondent,

WILLIAM ROBERT KLEIN,

Appellant.

Per Curiam:

The Appellate Division was warranted in ordering the appellant's disbarment. Although the appellant had the opportunity, accorded by section 90, subdivision 2, of the Judiciary Law, to be heard, he did not raise any triable issues, prior to entry of the order of disbarment, since he failed to interpose an answer denying any of the charges of misconduct leveled against him. The Appellate Division has granted his motion to vacate such order to the extent of giving him permission to file an answer and referring the issues raised by the answer to a Justice of the Supreme Court for the purpose of conducting a hearing and rendering a report. The appellant has thus been assured of an additional opportunity to be heard.

It should be noted that the order of disbarment, as its recitals demonstrate, was predicated solely on the charges contained in the petition and, accordingly, in reaching our decision herein, we have disregarded the intimations in the Appellate Division's opinion that the appellant made "baseless written charges against members of the Judiciary and members of the Bar" in view of the fact that the petition does not contain such a charge.

The order appealed from should be affirmed.

Order affirmed without costs. Opinion Per Curiam. All concur.

Decision.

COURT OF APPEALS

2 Mo. No. 637

IN THE MATTER

of

WILLIAM ROBERT KLEIN, an Attorney,

Appellant,

SOLOMON A. KLEIN,

Respondent.

July 7, 1966

Motion to compel the Appellate Division to include certain papers in the record on appeal herein denied.

APPENDIX C.

THE JUDICIAL CONFERENCE
OF THE
STATE OF NEW YORK
270 BROADWAY
New York 7, N. Y.
BArclay 7-1616

March 4, 1963

William R. Klein, Esq.
One Hundred
Fifth Avenue
New York, New York

Dear Mr. Klein:

In accordance with policies adopted by the Administrative Board of the Judicial Conference, your communications have been forwarded to the Appellate Division, Second Department for consideration.

Very truly yours,

THOMAS F. McCOY
State Administrator

TFM:ED

Order.

At a Term of the Appellate Division of the Supreme Court of the State of New York held in and for the Second Judicial Department, at the Borough of Brooklyn on the 19th day of December, 1962.

Present:

Hon. George J. Beldock,
" Henry L. Ughetta,
" Philip M. Kleinfeld,
" Marcus G. Christ,
" Arthur D. Brennan,
" L. Barron Hill,
" Samuel Rabin,
" James D. Hopkins.

IN THE MATTER

of

The Establishment of a Judicial Inquiry on Professional Conduct, with Respect to Attorneys and Counsellors at Law in or Having their Offices in or Practicing Law in Kings County

---

An order having been made by this Court on the 21st day of January, 1957, upon the Petition of the Brooklyn Bar Association directing that a Judicial Inquiry and Investigation be made with respect to alleged illegal, corrupt or unethical practices and Conduct Prejudicial to the Administration of Justice, by certain attorneys and counsellors at law, and other persons acting in concert with them;

And the Court having heretofore directed that said Judicial Inquiry and Investigation shall terminate at the close of business on January 31, 1963, at which time, Hon. Edward G. Baker, the Justice heretofore designated by this Court to conduct said Inquiry and Investigation shall make and file with this Court his report setting forth his proceeding and his findings and his recommendations;

And it appearing from the intermediate reports, heretofore submitted and filed by said Justice, that the administration of justice so requires.

NOW THEREFORE, pursuant to the authority vested in this Court by law (Constitution Article VI, Section 4, Judiciary Law Sections 90, 86), it is hereby

ORDERED that effective February 1, 1963, there is hereby established a Judicial Inquiry on Professional Conduct, to receive and investigate and report to the Court from time to time, all complaints from whatever source received, with respect to:

(a) Any improper practices and abuses by attorneys and counsellors at law residing in and having their offices in or practicing law in Kings County.

(b) Any corrupt or unethical practices by attorneys and counsellors at law, residing in or having their offices in or practicing law in Kings County, in the solicitation of retainers in the subsequent prosecution and disposition of claims and actions, and in any other matter.

(c) Any and all other practices by attorneys and counsellors at law, residing in or having their offices in or practicing law in Kings County, involving professional misconduct, fraud, deceit, corruption and crime; and

(d) Any and all conduct prejudicial to the administration of justice by attorneys and counsellors at law, residing in or having their offices in or practicing law in Kings County; and it is

FURTHER ORDERED that in addition to his other assignments, such "Judicial Inquiry on Professional Conduct" shall be conducted by the Honorable Edward G. Baker, a Justice of Supreme Court at an Additional Special Term of the Supreme Court, Kings County, with full power to compel the attendance of witnesses, their testimony under oath, and the production of all relevant books, papers and records; and it is

FURTHER ORDERED that such additional Special Term of the Supreme Court in and for Kings County be and it hereby is appointed to be held commencing February 1, 1963 at the Courthouse in Brooklyn, or at such other places as the Justice assigned may deem necessary or advisable, and that the Justice, Edward G. Baker, be and he hereby is assigned to hold such additional Special Term; and it is

FURTHER ORDERED that Solomon A. Klein, an attorney and counsellor at law of 375 Pearl Street, Brooklyn, New York, be and he hereby is appointed at a salary of $10,000 per annum, to aid the said Justice, and any other Justice who may hereafter be assigned in the conduct of the said "Judicial Inquiry on Professional Conduct" pursuant to the provisions of the Judiciary Law (Section 90, subdivisions 6 and 7) with power (1) to appoint subject to the approval of this Court, such qualified assistants as he deems necessary and (2) to incur such other expenses as are necessary to the proper performance of his duties subject however to the budgetary limitations heretofore approved by this Court; and it is

FURTHER ORDERED that for the purposes of facilitating the work of the "Judicial Inquiry on Professional Conduct", the Clerk of this Court is hereby authorized to make available to said "Judicial Inquiry on Professional Conduct", upon request, statements of retainer filed in this Court, prior to July 1, 1960 by attorneys and counsellors at law, residing in or having their offices in or practicing law in Kings County, and the Judicial Conference of the State of New York be and it hereby is also authorized to make available to said "Judicial Inquiry on Professional Conduct" upon request all statements filed with it on and after July 1, 1960, by attorneys and counsellors at law residing in or having offices or practicing law in Kings County; and it is

FURTHER ORDERED that all pending and undetermined matters before the present Judicial Inquiry and Investigation at the close of business on January 31, 1963, be and they hereby are transferred to the Judicial Inquiry on Professional Conduct, hereby established for appropriate action; and it is hereby

FURTHER ORDERED, that for the purpose of protecting the reputations of innocent persons, all proceedings by said "Judicial Inquiry on Professional Conduct" shall be conducted in private, pursuant to the provisions of the Judiciary Law (Section 90, subdivision 10) that all the facts, testimony and information adduced and all papers relating to the "Judicial Inquiry on Professional Conduct", except this Order, shall be sealed and be deemed confidential; and that none of such facts, testimony and information, and none of the papers and proceedings herein shall be made public or otherwise divulged until the further order of this Court; and it is

FURTHER ORDERED that from time to time during said Judicial Inquiry on Professional Conduct, the Justice assigned thereto shall make and file with this Court, his in-

termediate reports setting forth his proceedings, his findings and his recommendations; and it is

FURTHER ORDERED that pursuant to Section 90 Subdivisions 6 and 7 of Judiciary Law, the expenses of said "Judicial Inquiry on Professional Conduct" be and they hereby are made a charge upon Kings County.

Enter

GEORGE J. BELDOCK
Presiding Justice

Appellate Division
Supreme Court
Second Judicial Department

SUPREME COURT APPELLATE DIVISION

SECOND JUDICIAL DEPARTMENT

45 Monroe Place

Brooklyn 1, N.Y.

October 10, 1963

William Robert Klein, Esq.
100 Fifth Avenue
New York, N.Y.

Dear Sir:

Enclosed herewith is a copy of an order of this Court, dated October 9th, referring all of the charges made by you in all of your correspondence to this Court and to the members thereof, and to the Governor of the State of New York, to the Judicial Inquiry on Professional Conduct for

Kings County, for the taking of testimony under oath, and report, as provided therein.

Very truly yours,

JOHN J. CALLAHAN
Clerk

JJC:s
Encl.

At a Term of the Appellate Division of the Supreme Court of the State of New York, held in and for the Second Judicial Department at the Borough of Brooklyn, on the 9th day of October, 1963.

Present:

Hon. George J. Beldock,
Presiding Justice,
" Henry L. Ughetta,
" Philip M. Kleinfeld,
" Marcus G. Christ,
" Arthur D. Brennan,
" L. Barron Hill,
" Samuel Rabin,
" James D. Hopkins,
Justices.

WILLIAM ROBERT KLEIN, an attorney and counselor-at-law of 100 Fifth Avenue, New York, N. Y., having heretofore addressed various communications to this Court, to the Governor of the State of New York and others, complaining about and demanding an investigation of his charges of alleged misconduct and corruption on the part

of members of the Judiciary and members of the Bar in connection with the litigation in an action entitled "Fun Fair Park, Inc., *et al.*, v. Frances Ursini, *et al.*"; it is

ORDERED, that pursuant to the order of this Court entered December 19, 1962, as amended by order entered October 10, 1963, the said charges be and they hereby are referred to the Judicial Inquiry on Professional Conduct for Kings County, Mr. Justice Edward G. Baker presiding, for the taking of testimony, under oath, and for a report which shall set forth his findings with respect to said alleged charges; and it is

FURTHER ORDERED, that the Clerk of this Court is directed to forthwith transmit to said Judicial Inquiry on Professional Conduct the complete file in this matter.

Enter:

GEORGE J. BELDOCK
Presiding Justice

Order Amending Order

At a Term of the Appellate Division of the Supreme Court of the State of New York, held in and for the Second Judicial Department at the Borough of Brooklyn, on the 30th day of October, 1963.

Present:

Hon. George J. Beldock,
Presiding Justice,
" Philip M. Kleinfeld,
" Marcus G. Christ,
" Arthur D. Brennan,
" L. Barron Hill,
" Samuel Rabin,
" James D. Hopkins,
Justices.

On the Court's own motion, the order of this Court dated and entered October 9, 1963, is hereby amended to read as follows:

At a Term of the Appellate Division of the Supreme Court of the State of New York, held in and for the Second Judicial Department at the Borough of Brooklyn, on the 9th day of October, 1963.

Present:

Hon. George J. Beldock,
Presiding Justice,
" Henry L. Ughetta,
" Philip M. Kleinfeld,
" Marcus G. Christ,
" Arthur D. Brennan,
" L. Barron Hill,
" Samuel Rabin,
" James D. Hopkins,
Justices.

WILLIAM ROBERT KLEIN, an attorney and counselor-at-law of 100 Fifth Avenue, New York, N. Y., having heretofore addressed various communications to this Court, to the Governor of the State of New York and others, complaining about and demanding an investigation of his charges of alleged misconduct and corruption on the part of members of the Judiciary and members of the Bar in connection with the litigation in an action entitled "Fun Fair Park, Inc., *et al.*, v. Frances Ursini, *et al.*,"; it is

ORDERED, that pursuant to the order of this Court entered December 19, 1962, as amended by order entered October 9, 1963, the said charges be and they hereby are referred to the Judicial Inquiry on Professional Conduct for Kings County, Mr. Justice Edward G. Baker presiding, for the taking of testimony, under oath, and for a report which shall set forth his findings with respect to said alleged charges; and it is

FURTHER ORDERED, that in addition to the charges made by said William Robert Klein, attorney, the charges made by Frances Ursini and John R. Ursini, his clients, in their various communications, be and they hereby are also referred to the Judicial Inquiry on Professional Conduct for Kings County, Mr. Justice Edward G. Baker presiding, for similar action; and it is

FURTHER ORDERED, that the Clerk of this Court is directed to forthwith transmit to said Judicial Inquiry on Professional Conduct the complete file in this matter.

Enter:

GEORGE J. BELDOCK
Presiding Justice"

Enter:

GEORGE J. BELDOCK
Presiding Justice

APPENDIX D.

After July 7, 1966, and during the months of July and August, 1966, petitioner was repeatedly in communication by local and distance telephone, with the Clerks of the two State Courts, and with the office of the Prosecutor, as an official arm of the Appellate Division. They were all advised of petitioner's intention to apply here for certiorari, and requested to arrange for transmission of the record original with each court for review here.

Response each time referred to summer vacationing of clerks, and absence of anyone who would know, whether remittitur had issued from the Court of Appeals. All response was negative and uncertain.

Petitioner, thus delayed, under date of August 17, 1966, forwarded his interim application for stay of judgment, with due proof of service, attaching thereto facsimiles of the "structural record in the original Court," and appellant's and respondent's briefs used in Court of Appeals. Particular attention was called to the "Appellant's Statement of Facts" with its implemented source references, in the certified record below, "standing unchallenged" by the prosecution, thus usable in place of the unlocated record.

Petitioner's letter on his uncertainties, to the Clerk in Albany, dated August 26, 1966, brought his letter dated August 29, 1966, informing that:

> "The remittitur in the above-entitled cause" was forwarded *on August 11, 1966* * * * Certification of the remittitur is obtained from the Clerk, with whom remittitur is filed,—in this case the Appellate Division.

Petitioner's letter, dated September 2, 1966, addressed to the Prosecutor, called attention to the fact that petitioner's prior letter, dealing with stipulating on the record, "remained unanswered." On September 8, 1966,

Prosecutor's assistant counsel wrote petitioner—at last "enclosing herewith photocopy of remittitur." Petitioner's letters dated September 8, 1966, to Clerk in Brooklyn and Albany, requesting each to "forward * * * the record on appeal in the above matter" called attention to the time requirement of the U. S. Supreme Court, and the respective original records required *from each Court.* On September 13, Clerk of Appellate Division (Herman M. Pogul) "acknowledge(d) your letter of September 8, 1966," adding

> "We cannot at this time comply with your request to send the original papers to the Clerk of the Supreme Court of the United States in Washington. *It will first be necessary that you advise us of the actual date on which you filed your petition for the writ with such Clerk, and that you send us a copy of the filed petition.*
>
> "*Upon receipt of a copy of the petition,* and notice of the date of its filing, we will arrange to transmit the original papers as requested."

The Clerk in Albany wrote on September 15, that he desired to be furnished with exact copy of the motion under Rule II made in that Court which he would certify, in turn for transmission to this Court.

Petitioner forwarded facsimile'd copy with letter of September 23, 1966, to Albany, asking for entire motion record to be certified and so transmitted, in light of time factor.

On September 28, after compliance with demand for service of a copy of petition for writ upon the Clerk of Appellate Division, petitioner wrote, advising of the filing of petition for writ, and requesting "early reply."

> "May I be advised of what papers you are sending as to constitute the record on review; whether you are sending the identical record as listed by you,"

and likewise to Clerk in Albany.

Thereupon, letter to Clerk of this Court, dated September 28, 1966, noting $100 check and separate mailing of 40 copies of petition with request of word of "arrival of the original records" from the respective State Courts. A visit to the Clerk of this Court brought discovery that records *had not yet* arrived and that the Brooklyn Clerk was still withholding same, on October 7, 1966.

Petitioner states unequivocally that this practice by the Court in Brooklyn, is a continuation of the long-established practice of the Court and its Prosecutor in and for this prosecution of placing every obstacle, large and petty, in the path of this petitioner's attempts to develop a *first* day in Court, not yet had,—all as set forth in petitioner's undisputed statement of facts.

Verification.

County of New York,
State of New York, ss:

WILLIAM ROBERT KLEIN, being duly sworn deposes and says that he is the petitioner herein; that he has read the foregoing petition, with rider amendment and Appendix D, and as so amended, is true and correct, within petitioner's knowledge.

WILLIAM ROBERT KLEIN.

Sworn to before me this
13 day of October, 1966.

VICTOR BLEIWAS
Notary Public, State of New York
No. 24-5343525 Qual. in Kings Co.
Commission Expires March 30, 1968